

CHAPTER 3

CLAIMS0301 ASSIGNMENT OF CLAIMS030101 Authority for Assignments

The authorities contained in 41 U.S.C. 15 and 31 U.S.C. 3727 authorize assignments to banks, trust companies, or any financing institution (including federal lending agencies) of monies due, or to become due, under government contracts totaling \$1,000 or more.

030102 Federal Acquisition Regulation (FAR) Requirements

FAR, Part 42, prescribes policies and procedures for:

A. Recognition of a change in a contractor's name as prescribed in FAR 42.1205.

B. Recognition of a successor in interest to government contracts when contractor assets are transferred as prescribed in FAR 42.1204.

030102 Change of Name Agreement

A. A change of name agreement means a legal instrument executed by the contractor and the government that recognizes the legal change of name of the contractor without disturbing the original contractual rights and obligations of the parties. If only a change of the contractor's name is involved and the government's and contractor's rights and obligations remain unaffected, the parties shall execute an agreement to reflect the name change. The contractor shall forward to the responsible contracting officer three signed copies of the Change of Name Agreement, and one copy each of the following:

1. The document effecting the name change, authenticated by a proper official of the state having jurisdiction.

2. The opinion of the contractor's legal counsel stating that the change of name was properly effected under applicable law and showing the effective date.

3. A list of all affected contracts and purchase orders remaining unsettled between the contractor and the government, showing for each the:

- a. Contract number and type.
- b. Name and address of the contracting office.
- c. Total dollar value as amended.
- d. Remaining unpaid balance.

B. When a contractor has provided the requirements in FAR 42.1205 to the Administrative Contracting Officer (ACO) and it has been reviewed by the ACO's legal office for sufficiency, the ACO will issue a modification to the contract which changes the name of the contractor.

C. Any questions regarding the change of name agreement should be referred to the ACO.

030103 Successor in Interest to Government Contract Agreement

It is the responsibility of the contracting officers to accomplish and resolve the actions contained in paragraph 030103. This paragraph was included as general guidance for personnel in the disbursing offices.

A. This agreement must consist of a legal instrument executed by the contractor (transferor), the successor in interest (transferee),

and the government by which, among other things, the transferor guarantees performance of the contract, the transferee assumes all obligations under the contract, and the government recognizes the transfer of the contract and related assets.

B. Title 41, U.S.C. section 15 prohibits transfer of government contracts. However, the government may, in its interest, recognize a third party as the successor in interest to a government contract when the third party's interest in the contract arises out of the transfer of all the contractor's assets or the entire portion of the assets involved in performing the contract. Examples include, but are not limited to:

1. Sale of these assets with a provision for assuming liabilities.
2. Transfer of these assets incident to a merger or corporate consolidation.
3. Incorporation of a proprietorship or partnership, or formation of a partnership.

C. When a contractor asks the government to recognize a successor in interest, the responsible contracting officer shall obtain from the contractor three signed copies of the proposed novation agreement and one copy each, as applicable, of the following:

1. An authenticated copy of the instrument effecting the transfer of assets; e.g., bill of sale, certificate of merger, contract, deed, agreement, or court decree.
2. A list of all affected contracts and purchase orders remaining unsettled between the transferor and the government, showing for each the:
 - a. Contract number and type.
 - b. Name and address of the contracting office.
 - c. Total dollar value as amended.

d. Remaining unpaid balance.

3. A certified copy of each resolution of the corporate parties' boards of directors authorizing the transfer of assets.

4. A certified copy of the minutes of each corporate party's stockholders meeting necessary to approve the transfer of assets.

5. An authenticated copy of the transferee's certificate and articles of incorporation, if a corporation were formed for the purpose of receiving the assets involved in performing the government contract.

6. The opinion of legal counsel for the transferor and transferee stating that the transfer was properly effected under applicable law and the effective date of transfer.

7. Evidence of the transferee's capability to perform the contracts.

8. Balance sheets of the transferor and transferee as of the dates immediately before and after the transfer of assets, certified for accuracy by independent accountants.

9. Evidence that any security clearance requirements have been met.

10. The consent of sureties on all contracts listed under paragraph 030105-C(2).

D. When recognizing a successor in interest to a government contract is consistent with the government's interest, the responsible contracting officer shall execute a novation agreement with the transferor and the transferee. It shall ordinarily provide in part that:

1. The transferee assumes all the transferor's obligations under the contract.
2. The transferor waives all rights under the contract against the government.
3. The transferor guarantees performance of the contract by the transferee (a satisfactory performance bond may be accepted

instead of the guarantee).

4. Nothing in the agreement shall relieve the transferor or transferee from compliance with any Federal law.

E. When recognizing a successor in interest to a government contract, the responsible contracting officer shall follow the prescribed format as stated in FAR 42.1204.

030104 Government's Nonconcurrence in Transfer of Contract

When it is in the government's interest not to concur in the transfer of a contract from one company to another company, the original contractor remains under contractual obligation to the government. The contract may be terminated for reasons of default, if the original contractor does not perform. For additional guidance, see FAR 42.1204(b).

030105 Transfers not Considered Assignments

A. Rental payments to lessor's agents. Rental payments may be made to the agent of a lessor, if supported by evidence the agent is acting for the lessor. The rent also may be assigned even though the title to the property is not transferred (11 Comp Gen 278 (1932)) and 5 Comp Gen 749 (1926)).

B. Bankruptcy or receiverships by operation of law. Payment properly due may be made to the receiver (3 Comp Gen 623 (1924)) or trustee if approved by general counsel.

C. Assumption of contract surety.

1. When the contractor defaults and the surety assumes the contract, certain payments may be made to the surety (15 Comp Gen 409 (1935) and 12 Comp Gen 507 (1933)). If there are any aspects regarding conflicting claims, tax indebtedness, etc., the matter is handled as a claim to the General Accounting Office.

2. Settle with the contractor and surety as:

a. A surety, which completes work under a contract on which they have assumed, is subrogated to the rights of the contractor against the government for the unpaid balance due from the United States on that contract. It is also subrogated to the rights of the government against the contractor for the excess cost of completing the work of furnishing the materials and supplies. Therefore, the surety is entitled to be paid by the government the cost of completing the work, but no profit.

b. The contractor is entitled to be paid for work they performed if any funds are available on the contract for such payment after reimbursing the surety.

c. The total payments by the government must not exceed the contract price (3 Comp Gen 995 (1926), 8 Comp Gen 36 (1928), 8 Comp Gen 58 (1928), 8 Comp Gen 266 (1928), 8 Comp Gen 318 (1929), and 8 Comp Gen 435 (1929)). It is common practice to require releases from the contractor and the surety (3 Comp Gen 995 (1926) and 8 Comp Gen 266 (1928)).

d. Payment into court of the balance should not be made (14 Comp Gen (1935)). The amount remaining is paid to the assignee of a receiver where the court orders the receiver to accept the assignee's offer to complete the work in consideration of receiving all the payment and retaining percentages due (3 Comp Gen 623 (1924)).

030106 Documents Required To Be Filed in Connection With Assignments

A. The disbursing office designated in the contract shall pay assignees only after receipt of these assignment documents:

1. Three copies of the notice of assignment acknowledged by the contracting officer.

2. Original and one copy of the signed notice and a true copy of the instrument of assignment from the assignee.

3. Two copies of the notice acknowledged from the surety or sureties, if any.

These copies are received from the surety or sureties via the assignee.

B. The disbursing office:

1. Signs and returns a copy of the notice to the assignee.

2. Files the true copy of the instrument of assignment, the original notice, and a copy of the notice acknowledged by the contracting officer, with the disbursing office copy of the contract. Files a copy of the notice acknowledged by the surety or sureties, if any.

3. Signs, dates and returns the receipt, if applicable, to the assignee.

030107 Documents Required To Be Filed If Assignment is Cancelled

A. If the assignee releases the contractor from the assignment of claims under the existing contract, the disbursing office makes remaining payments to the contractor only after receipt of these release documents:

1. A true copy of the instrument of release of assignment; and

2. The original and two copies of the release notice.

B. The disbursing office:

1. Signs and returns a copy of the release notice to the contractor.

2. Files the true copy of the instrument of release of assignment and the original release notice with the disbursing office copy of the contract. Acknowledgment by the contracting officer and surety is not required. For additional guidance see FAR 32.805(e).

3. Signs, dates, and returns the receipt, if applicable, to the assignee.

030108 Letter Contract Assignments

When assignments of claims under letter contracts are made, notices (with copies of

assignments) are given to contracting officers and disbursing offices. If a letter contract is assigned, that assignment is not voided by a subsequent definitization of the contract. Contracting officers and disbursing offices accept, receipt for, and honor the second assignment of the proceeds of a definitive contract superseding a letter contract. The two instruments of assignments are thereafter treated as if they were only one instrument, and payments continue to the assignee.

030109 Open-End, Call-Type, or Indefinite Delivery-Type Contracts

A. Assignment of claims under open-end or call-type contracts or indefinite delivery type contracts are authorized provided orders placed prior to assignment obligate the government to pay \$1,000 or more or provided the basic contract imposes a minimum obligation of \$1,000 or more.

B. When the disbursing office questions whether an assignment of claims applies to an individual call or order under indefinite, delivery-type contracts, payments under the call or order are withheld pending determination of the status and validity of the assignment by the contracting officer.

030110 Unilateral Purchase Orders

A. A notice of assignment on a purchase order of \$1,000 or more will not be acknowledged unless it has been established that such order is a legally binding contract.

B. Payment of the purchase order is withheld pending determination of the status of the assignment by the contracting officer.

C. If the contracting officer rejects the assignment, the disbursing office returns the acknowledged notice and copy of the assignment to the assignee and advises that the assignment cannot be recognized for the reasons stated by the contracting officer.

D. If the contracting officer has determined that the assignment is valid, the disbursing office acknowledges the notice of assignment

and takes the required action as detailed in paragraph 030106-B.

030111 Basic Ordering Agreements

A notice of assignment will not be acknowledged on a basic ordering agreement. The paying office returns the notice and copy of the assignment to the assignee and advises that assignments may be acknowledged on individual orders in excess of \$1,000. It should be noted that the Basic Ordering Agreement "G" contracts require a notice of assignment for each delivery order/supplemental procurement identification number. If there is any doubt on any of these type of contracts, they should be referred to your legal office for determination.

030112 Financing Companies

A business concern which, incidental to its principal business of acting as selling agent, advances money to pay for raw materials, labor, etc., is not a "Financing Institution" to which money due, or to become due, under a government contract may be assigned (54 Comp Gen 80 (1984)). A company regularly engaged in the financing business is not disqualified from accepting assignments as a "financing institution" solely because it consists of an individual or partnership (20 Comp Gen 415 (1941) as distinguished by 54 Comp Gen 80 (1984)). When a contractor factors or sells an accounts receivable at a discount, they are non-allowable assignments. In such cases and others of similar nature, legal counsel should be consulted in order to protect the government's interest.

030113 Special Considerations

A. Two assignments of the same contract may not exist since the second assignment without release from the first assignment would be null and void. After the first assignment is released and the original parties are notified, a second assignment may be made (22 Comp Gen 520 (1942)).

B. The performance of work under the contract may not be assigned (41 U.S.C. 15).

C. If the dollar amount of the contract

is increased, it is not necessary to execute an additional assignment (23 Comp Gen 943 (1944)).

D. Date of assignment shall not be before date of contract.

0302 DOUBTFUL CLAIMS

030201 General Information

A. The disbursing office settles commercial accounts for which they have payment responsibilities. The local office of counsel or staff judge advocate furnishes legal guidance on claims involving questions of law. Local counsel should coordinate their efforts with DFAS Headquarters General Counsel.

B. Claims by the government may not be compromised by an agent of the government except as authorized by law. Demand for the full amount is required. The action for indebted contractors in Chapter 18 of this volume is required if payment in full is not received on time.

C. Doubtful claims exclude claims applicable to the PPA. The Comptroller General has held that PPA interest must be paid from the funds available for the administration of the program for which interest was incurred.

030202 Responsibility of Contracting Officer, Disbursing Office, and DFAS Columbus

A. The Contract Disputes Act of 1978 provides a fair, balanced, and comprehensive statutory system of legal and administrative remedies in resolving government contract claims. The Act's provisions help to induce resolution of more contract disputes by negotiation prior to litigation; to equalize the bargaining power of the parties when a dispute exists; to provide alternate forums suitable to handle the different types of disputes; and to ensure fair and equitable treatment to contractors and Federal agencies.

B. A doubtful claim exists when the disbursing office is unable to decide positively that the claim is or is not payable. The disbursing office refers such claims to the contracting officer with an explanation of the doubtful

aspects. The contracting officer may be the PCO, ACO, or TCO depending on the nature of the claim. Primary responsibility may shift between one or more types of contracting officers during the process of developing a claim. With assistance from the disbursing office, the contracting officer establishes additional facts and develops the claim to its final stage, including recommendations.

1. All claims by the government against a contractor relating to a contract shall be the subject of a decision by the contracting officer. The contracting officer shall issue the decision in writing and shall mail or otherwise furnish a copy of the decision to the contractor. The decision shall state the reasons for the decision reached and shall inform the contractor of the right to appeal. The contracting officer's decision on the claim is final and conclusive unless an appeal or suit is instituted by the contractor.

2. All related paperwork of the claim then is sent to the legal office for the cognizant disbursing office. If the disbursing office is at a DFAS Center, it will be processed there. If the disbursing office is an Operating Location (OPLOC), the OPLOC will forward it to their colocated disbursing office. If the OPLOC does not have a colocated legal office, it will forward it to their servicing DFAS Center. For all other disbursing offices that do not have a colocated legal office, they also will forward the claim to the servicing DFAS Center. Claims that are filed directly with the General Accounting Office (GAO) by contractors are returned to one of the DFAS Centers for development and recommendation. The receiving DFAS Center will send a copy of the GAO decision to the cognizant disbursing office.

NOTE: Every claim against the United States that is forwarded to the Claims Division, GAO, as well as all correspondence relating to the claim, must contain the employer's identification number.

C. Decisions of the Armed Services Board of Contract Appeals (ASBCA). The disbursing office makes the vast majority of payments directed by decisions of the ASBCA.

Occasionally, there may be a reason(s) to doubt the decision of the ASBCA because it may appear to be fraudulent, capricious, arbitrary, so grossly erroneous as necessary to imply bad faith, not supported by substantial evidence, or in error on a question of law. In any such case, the disbursing office refers the matter, along with a statement of the grounds for such referral, and supporting documents to the contracting officer who in turn refers it to the servicing office of counsel or staff judge advocate. If the office of counsel or staff judge advocate believes that the ASBCA committed a reversible error in the decision and that the best interests of the government warrant further review, the Agency Trial Attorney or General Counsel and the Office of the Secretary of Defense General Counsel determines if the matter should be referred to the Department of Justice (DoJ) for the initiation of judicial proceedings. If the DoJ agrees with the decision of the ASBCA, payment will be made.

030203 Claims Requirements

The disbursing office prepares the administrative report and attaches the claim before routing it through the channels described in paragraph 030202-B. Open the report with the statement, "This is a report of a doubtful claim." The second and succeeding paragraphs should contain complete statements of the facts and the doubtful questions involved. The disbursing office reviews the claim file to ensure it is complete before forwarding it for review and evaluation.

030204 Documents Required

Information in this paragraph is furnished for guidance and is not mandatory. The documents and information listed should contain sufficient facts so that the GAO will not return the claim for more documents. Claims for amounts due deceased or mentally incompetent contractors include the applicable documents listed and processed under paragraph 030205. Claims not specifically covered are developed and supported as circumstances require.

A. General. The following data are common to all claims. Additional documents are

furnished in specific cases as indicated:

1. Original signed claim.
2. Copy of contract, purchase order, (or both if applicable), lease, or other contracting document.
3. Copies of all related correspondence between the claimant and the DFAS.
4. A signed statement by the disbursing office that:
 - a. Payment has not been made and will not be made except by certification in the name of the Comptroller General, or
 - b. Partial settlement in amount has been made and no further payment will be made except by certification in the name of the Comptroller General, or
 - c. Funds have been reserved (citing the appropriation from which the payment will be made, if approved by GAO) or that funds have not been reserved, as applicable.
5. Cite all vouchers covering payments or collections, as applicable, made under the contracting document.
6. A signed report by the contracting officer as to what the records of that office show concerning the claim and the administrative recommendation. The report should include the intent of the contracting document.
7. Certified true copies or photostat copies of the invoices or other billing documents.
8. Copies of the receiving reports, other receiving documents, or if not available, a signed statement that the supplies and services were received.
9. SF 1034, Public Voucher for Purchases and Services Other Than Personal, (or other applicable voucher), in an original and six copies. The original is certified.

10. Copy of claimant's bid, if applicable.

11. Any other data considered appropriate.

B. Mistake in Bid. With a copy of the claimant's bid, include an abstract of all other bids.

C. Discount. Include the document containing the claimant's discount offer. If claimant contends that discount was taken after discount period, include a certified true copy or photostat copy of the invoice. The invoice should show the date received in the office designated by the contracting document.

D. Payments Under Leases. If the lease agreement is the responsibility of the U.S. Army Corps of Engineers, a report and recommendation are obtained from that activity.

E. Landing and Parking Fees and Other Accessorial Charges:

1. A signed report from the responsible officer of the major command having jurisdiction over the aircraft.

2. A signed statement containing the number and flight of the aircraft, and confirmation that the flight was authorized.

F. Coal Contracts:

1. Copy of coal analysis, where applicable.

2. Copy of weight certificate or other proof of weight.

3. An administrative recommendation from Director, DFAS, Columbus Center, if considered appropriate.

030205 Amounts Due Deceased or Mentally Incompetent Creditors

A. Deceased Public Creditors. Claims for amounts alleged to be due the estates of deceased individual public creditors that cannot be

settled locally, by reason of doubt, are submitted to the GAO for settlement. An element of doubt exists when there is a question as to the amount and the validity of the claim or a question as to whom payment may be made under the laws of the domicile of the decedent.

1. The claimant presents the claim against the United States for amounts due in the case of a deceased creditor. The claim is supported by the applicable documents listed in paragraph 030204. The contracting officer's statement will show there is (or there is not) an outstanding debt to the government. Obtain a statement of legal review and recommendation from the local office of counsel or staff judge advocate.

2. Claims involving current unnegotiated U. S. Government checks in the possession of the claimant which are drawn to the order of a deceased public creditor should be returned to the disbursing office which issued the checks. Checks that are undeliverable because of the death of the creditor will be stamped "Not Negotiable" on the face of the check. Attach a copy of SF 1098, Schedule of Cancelled or Undelivered Checks, to the claim.

B. Incompetent Public Creditors:

1. GAO Action. Claims for amounts due incompetent public creditors of the United States are submitted to the GAO for settlement. No form is prescribed for this class of claim; however, such claim must be in writing over the signature and address of the guardian, committee, or other person claiming on behalf of the incompetent and must set forth the connection of the incompetent with the Department of Defense. Those authorized to claim for an incompetent are:

a. Guardian or committee of the estate of an incompetent. A short certificate of the court showing the appointment and qualification of the claimant as guardian or committee is attached to the claim.

b. Persons other than a guardian or committee who supports the claim with a statement to show:

(1) That no guardian or committee has been or will be appointed;

(2) The claimant's relationship to the incompetent, if any;

(3) The name and address of the person having care and custody of the incompetent; and

(4) That any amount paid to the claimant will be applied to the use and benefit of the incompetent.

2. Administrative Action. After the first payment has been certified by the GAO to a guardian or committee, recurring payments may be made in the same form and capacity by the disbursing office as long as the appointment as guardian or committee remains in effect and the matter is otherwise free from doubt. Later claims for recurring payments need not be accompanied by a court certificate; however, they must be supported by a statement that the appointment is still in full force and effect.